

SEP 28 2004

1:11PM

CANTOR COLBURN LLP 860-286-0115

NO.527 P.1

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JFW

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FACSIMILE TRANSMITTAL SHEET

DATE: September 28, 2004TO: USPTO Appeals Division - After Final
cc:

FAX NO.: (703) 746-4000

FROM: Karen A. LeCuyer, Patent AgentTOTAL NUMBER OF PAGES SENT
(INCLUDING THIS COVER SHEET): (9) - including this cover sheet

COMMENTS:	Re: Our Docket No. NOV-0001; U.S. Ser. No.: 10/072,823
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If there are any problems with this facsimile transmission, please contact Leila Leahy at: (860) 286-2929, Ext. 1187. Thank you.

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NO.527

P.2

CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8)

Applicant(s): **CHEN**

Docket No.

NOV-0001

Application No.

10/072,823

Filing Date

February 8, 2002

Examiner

M. V. Meller

Customer No.

23413

Group Art Unit

1654

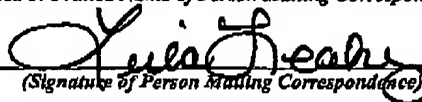
Invention: **ANTI-CANCER AGENTS AND METHOD OF USE THEREOF**

I hereby certify that this Copy of Final OA (5p.); Notice of Appeal (1 orig. 1 copy).
(Identify type of correspondence)

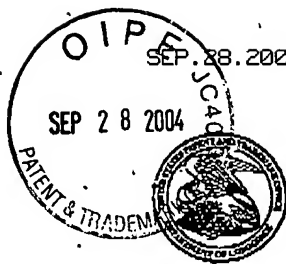
is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on
September 28, 2004
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Leila Leahy

(Typed or Printed Name of Person Mailing Correspondence)


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SEP. 28. 2004

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,823	02/08/2002	Sophie Chen	NOV-0001 - 3	1435

23413 7590 07/28/2004

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JUL 30 2004

CANTOR COLBURN LLP

EXAMINER

MELLER, MICHAEL V

ART UNIT PAPER NUMBER

1654

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Final

DOCKETED	
Due: 10-28-04	
Item: Final Response	
Initials: <i>sk</i>	On: 8/2/04

Expedited
DT. 9/28/04

Application No.

10/072,823

Applicant(s)

CHEN, SOPHIE

Examiner

Michael V. Meller

Art Unit

1654

Office Action Summary

The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16, 18-23, 26-29, 32-35 are is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-9, 11-16, 18-23, 26-29, 32-35 are is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-162)
- ☐ Other: _____

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DETAILED ACTION***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9, 11-16, 18-23, 26-29, 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 57167938, GB 1476016 or JP 352102434 taken with JP 11236334 or JP 52145509.

Applicant has argued that the types of cancer being treated are different in the various references. The references teach using the individual components to treat cancer. The references do not have to teach applicants' use. The references just happen to teach that the individual components can be used to treat cancer. This in and of itself would have motivated one of ordinary skill in the art to use the two components together to produce the same composition as claimed. That is all that is required by patent law. There is no unpredictability as applicant suggests. The individual components are known to be used individually in the art for the same purpose, namely, to treat cancer.

Applicant next argues that the case law cited is not appropriate for this case. The case law cited is just that, law. These cases are routinely used in the pharmaceutical arts and this case involves a plant extract which does not need FDA approval, so technically it is a natural pharmaceutical not as applicant has

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suggested. The plant extract art is well settled and the known treatments from these plants are well known as is evidenced by the references.

Applicant asks why the examiner says that the plant extracts do not need FDA approval. This is because they are natural products, i.e. they are not synthetically made. Thus, there is nothing unpredictable about them.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael V. Meller
Primary Examiner
Art Unit 1654

MVM